

HOUSE BILL 934

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By: **Delegates Carter, Alston, and Anderson**
Introduced and read first time: February 11, 2011
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Credit Reports and Credit Histories of Applicants**
3 **and Employees – Limitations on Use by Employers**

4 FOR the purpose of prohibiting an employer from using the credit report or credit
5 history of an employee or applicant for employment for certain purposes;
6 authorizing an employer to request or consider an applicant's or employee's
7 credit report or credit history under certain circumstances; authorizing the
8 Commissioner of Labor and Industry to investigate, under certain
9 circumstances, whether there has been a violation of this Act; requiring the
10 Commissioner to adopt certain regulations; requiring an employer to disclose
11 certain information in writing to an applicant or employee under certain
12 circumstances; prohibiting an employer from retaliating or discriminating
13 against an applicant or employee under certain circumstances; prohibiting an
14 employer from requiring an applicant or employee to waive any right under this
15 Act; specifying that an agreement entered into by an applicant or an employee
16 to waive any right under this Act is invalid and unenforceable; authorizing an
17 applicant or employee to submit a written complaint to the Commissioner under
18 certain circumstances; authorizing the Commissioner, under certain
19 circumstances, to try to attempt to resolve a violation of this Act informally or
20 request that the Attorney General bring a certain action; authorizing a certain
21 civil action under certain circumstances; requiring a court to award certain
22 costs and fees under certain circumstances; providing that this Act does not
23 apply to certain employers; specifying that this Act does not prohibit an
24 employer from performing an employment-related background investigation
25 that meets certain requirements; and generally relating to the use by employers
26 of credit reports and credit histories of employees and applicants for
27 employment.

28 BY repealing and reenacting, with amendments,
29 Article – Labor and Employment
30 Section 3–103

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Replacement Volume and 2010 Supplement)

3 BY adding to
4 Article – Labor and Employment
5 Section 3–711
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2010 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Labor and Employment**

11 3–103.

12 (a) The Commissioner may conduct an investigation under Subtitle 2 of this
13 title, on the Commissioner’s own initiative or may require a written complaint.

14 (b) The Commissioner may conduct an investigation under Subtitle 4 of this
15 title, on the Commissioner’s own initiative or on receipt of a written complaint.

16 (c) The Commissioner may conduct an investigation to determine whether
17 Subtitle 5 of this title has been violated on receipt of a written complaint of an
18 employee.

19 (d) (1) The Commissioner may investigate whether § 3–701 of this title
20 has been violated on receipt of a written complaint of an applicant for employment.

21 (2) The Commissioner may investigate whether § 3–702 OR § 3–711 of
22 this title has been violated on receipt of a written complaint of an applicant for
23 employment or an employee.

24 (3) The Commissioner may investigate whether § 3–710 of this title
25 has been violated on receipt of a written complaint of an employee as provided in §
26 3–710(d)(1) of this title.

27 (e) The Commissioner may investigate whether Subtitle 9 of this title has
28 been violated:

29 (1) on the Commissioner’s own initiative;

30 (2) on receipt of a written complaint signed by the person submitting
31 the complaint; or

32 (3) on referral from another unit of State government.

1 **3-711.**

2 **(A) THIS SECTION DOES NOT APPLY TO AN EMPLOYER THAT IS:**

3 **(1) A FINANCIAL INSTITUTION, OR A SUBSIDIARY OR AN**
4 **AFFILIATE OF THE FINANCIAL INSTITUTION, THAT IS AUTHORIZED TO DO**
5 **BUSINESS UNDER FEDERAL OR STATE LAW;**

6 **(2) AN ENTITY THAT IS REQUIRED UNDER STATE OR FEDERAL**
7 **LAW TO OBTAIN BONDING OR OTHER SECURITY; AND**

8 **(3) REQUIRED TO OBTAIN AN APPLICANT'S OR EMPLOYEE'S**
9 **CREDIT REPORT UNDER FEDERAL OR STATE LAW.**

10 **(B) AN EMPLOYER MAY NOT USE AN APPLICANT'S OR EMPLOYEE'S**
11 **CREDIT REPORT OR CREDIT HISTORY IN DETERMINING WHETHER TO:**

12 **(1) DENY EMPLOYMENT TO THE APPLICANT;**

13 **(2) DISCHARGE THE EMPLOYEE; OR**

14 **(3) DETERMINE COMPENSATION OR THE TERMS, CONDITIONS, OR**
15 **PRIVILEGES OF EMPLOYMENT.**

16 **(C) AN EMPLOYER MAY REQUEST OR CONSIDER AN APPLICANT'S OR**
17 **EMPLOYEE'S CREDIT HISTORY OR CREDIT REPORT IF:**

18 **(1) THE APPLICANT WOULD HAVE OR EMPLOYEE HAS:**

19 **(I) CUSTODY OF OR UNSUPERVISED ACCESS TO CASH OR**
20 **MARKETABLE ASSETS VALUED AT \$2,500 OR MORE;**

21 **(II) SIGNATORY POWER OVER BUSINESS ASSETS OF \$100**
22 **PER TRANSACTION;**

23 **(III) A MANAGERIAL POSITION THAT INVOLVES SETTING THE**
24 **DIRECTION OR CONTROL OF THE BUSINESS; OR**

25 **(IV) ACCESS TO PERSONAL OR CONFIDENTIAL**
26 **INFORMATION, FINANCIAL INFORMATION, TRADE SECRETS, OR STATE OR**
27 **NATIONAL SECURITY INFORMATION; OR**

1 **(2) THE REQUEST OR CONSIDERATION OF THE APPLICANT'S OR**
2 **EMPLOYEE'S CREDIT HISTORY OR CREDIT REPORT HAS A BONA FIDE**
3 **WORK-RELATED PURPOSE.**

4 **(D) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT SPECIFY**
5 **THE CIRCUMSTANCES UNDER WHICH A REQUEST FOR OR CONSIDERATION OF AN**
6 **APPLICANT'S OR EMPLOYEE'S CREDIT HISTORY OR CREDIT REPORT HAS A BONA**
7 **FIDE WORK-RELATED PURPOSE.**

8 **(E) AN EMPLOYER THAT REQUESTS OR CONSIDERS AN APPLICANT'S OR**
9 **EMPLOYEE'S CREDIT HISTORY OR CREDIT REPORT UNDER SUBSECTION (C) OF**
10 **THIS SECTION SHALL DISCLOSE IN WRITING THE LEGAL AUTHORITY UNDER**
11 **WHICH THE EMPLOYER IS REQUESTING OR CONSIDERING THE CREDIT HISTORY**
12 **OR CREDIT REPORT.**

13 **(F) AN EMPLOYER MAY NOT RETALIATE OR DISCRIMINATE AGAINST AN**
14 **APPLICANT OR EMPLOYEE BECAUSE THE APPLICANT OR EMPLOYEE:**

15 **(1) SUBMITS A WRITTEN COMPLAINT UNDER SUBSECTION (H) OF**
16 **THIS SECTION;**

17 **(2) PARTICIPATES IN AN INVESTIGATION OR ACTION**
18 **CONCERNING A VIOLATION OF THIS SECTION; OR**

19 **(3) OPPOSES A VIOLATION OF THIS SECTION.**

20 **(G) (1) AN EMPLOYER MAY NOT REQUIRE AN APPLICANT OR**
21 **EMPLOYEE TO WAIVE ANY RIGHT UNDER THIS SECTION.**

22 **(2) AN AGREEMENT ENTERED INTO BY AN APPLICANT OR AN**
23 **EMPLOYEE TO WAIVE ANY RIGHT UNDER THIS SECTION IS INVALID AND**
24 **UNENFORCEABLE.**

25 **(H) IF AN EMPLOYER VIOLATES THIS SECTION, AN APPLICANT OR AN**
26 **EMPLOYEE MAY SUBMIT A WRITTEN COMPLAINT TO THE COMMISSIONER.**

27 **(I) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS**
28 **SECTION HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

29 **(I) ATTEMPT TO RESOLVE ANY ISSUE INVOLVED IN THE**
30 **VIOLATION INFORMALLY BY MEDIATION; OR**

31 **(II) REQUEST THAT THE ATTORNEY GENERAL BRING AN**
32 **ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.**

1 **(2) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER**
2 **THIS SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED**
3 **FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

4 **(3) IF THE COURT FINDS THAT AN EMPLOYER HAS VIOLATED THIS**
5 **SECTION, THE COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY'S**
6 **FEEES TO THE EMPLOYEE OR APPLICANT.**

7 **(J) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN**
8 **EMPLOYER FROM PERFORMING AN EMPLOYMENT-RELATED BACKGROUND**
9 **INVESTIGATION THAT:**

10 **(1) INCLUDES USE OF A CONSUMER REPORT OR INVESTIGATIVE**
11 **CONSUMER REPORT;**

12 **(2) IS AUTHORIZED UNDER THE FEDERAL FAIR CREDIT**
13 **REPORTING ACT; AND**

14 **(3) DOES NOT INVOLVE INVESTIGATION OF CREDIT**
15 **INFORMATION.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2011.